

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMAURYS HERNANDEZ,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

23-CV-7775 (JSR) (OTW)

19-CR-323-6 (JSR)

ORDER

ONA T. WANG, United States Magistrate Judge:

Movant, currently incarcerated at USP Big Sandy in Inez, Kentucky, brings this *pro se* motion under 28 U.S.C. § 2255, challenging the legality of his sentence entered in *United States v. Lopez*, No. 19-CR-323-6 (S.D.N.Y. Oct. 16, 2020). (ECF 1).¹ Judge Rakoff referred this case to me for a Report & Recommendation on September 5, 2023. (ECF 2). For the following reasons, the Court directs Movant to show cause, by filing a declaration within **sixty days of the date of this Order, by Monday, November 13, 2023**, why this application should not be denied as time barred.

I. BACKGROUND

Movant Amaurys Hernandez challenges his October 15, 2020, judgment of conviction, in which he pleaded guilty to conspiracy to commit Hobbs Act robbery, attempted Hobbs Act robbery, and use and possession of a firearm during a crime of violence. *See United States v.*

¹ Movant brings this motion seeking to have his sentence vacated and his criminal proceedings remanded for resentencing. He asserts that he is seeking authorization to file a second and successive motion, but a review of the Public Access to Court Electronic Records (PACER) system does not reveal that Movant has filed a previous Section 2255 motion.

Lopez, ECF 19-CR-323-6, 141 (S.D.N.Y. Oct. 16, 2020). Movant did not appeal his conviction, and he filed this motion on August 31, 2023.

II. DISCUSSION

A. Applicable Statute of Limitations

Movant's application may be time-barred. A federal prisoner seeking relief under Section 2255 must generally file a motion within one year from the latest of four benchmark dates: (1) when the judgment of conviction becomes final; (2) when a government-created impediment to making such a motion is removed; (3) when the right asserted is initially recognized by the Supreme Court, if it has been made retroactively available to cases on collateral review; or (4) when the facts supporting the claim(s) could have been discovered through the exercise of due diligence. *See* 28 U.S.C. § 2255(f). Movant placed this application in the prison mail collection box on July 26, 2023, more than two years after his judgment of conviction became final.

Movant is directed to show cause within sixty days why this application should not be denied as time barred. Movant should allege any facts that show that he has been pursuing his rights diligently and that some extraordinary circumstance prevented him from timely submitting this motion. *See Green v. United States*, 260 F.3d 78, 82 (2d Cir. 2001) (holding that extraordinary circumstances may warrant tolling the statute of limitations for § 2255 motions).

III. CONCLUSION

Within sixty days of the date of this Order, or Monday, November 13, 2023, Movant shall file a declaration showing cause why the motion should not be dismissed as time barred. For Movant's convenience, a declaration form is attached to this Order. If Movant files a

declaration within the time allowed, the Court will review it, and if proper, Order that the motion be served on Respondent. If Movant fails to comply with this Order, and cannot show good cause to excuse such failure, I will recommend that the motion be denied as time barred. No answer will be required at this time.

Because Movant has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: September 13, 2023
New York, New York



ONA T. WANG
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or
petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or
respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's
Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the
following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court
order. You may also refer to and attach any relevant documents.

Attach additional pages and documents if necessary.

Executed on (date)	Signature
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Name	Prison Identification # (if incarcerated)
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Address	City	State	Zip Code
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Telephone Number (if available)	E-mail Address (if available)
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